IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.9.2005

CORAM:

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

SECOND APPEAL NOs.1430 and 1431 OF 1991

Manager,
Mandvi Co-operative Bank Ltd.,
Bombay. ... Appellant in both the Second Appeals.

Vs.

1.M/s.Viswa Bandhu
rep.,by its partner Ashok
J.Mehta, Coimbatore.
2.M/s.Moolchand Amritlal
rep., by its partner Kapoorchand
Hasthimal, Bombay-2. ... Respondents 1 and 2 in S.A.1430/1991

1.M/s.Shah Fatehchand Jawantraj
by its Proprietor Prakash J.Mehta
Coimbatore-1.
2.M/s. Kapoorchand Amritlal,
by its Partner Kapoorchand Samanji
Bombay-2. ... Respondents 1 and 2 in S.A.1431/1991

3.The Maharashtra Co-operative
Bank Ltd., Bombay.1
4.Zonal Manager,
Syndicate Bank,
Coimbatore-1.
5.Regional Manager,
Syndicate Bank,
Coimbatore-1. ... Respondents 3 to 5 in both the S.As.

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Second Appeals preferred under Section 100 C.P.C. against the Judgment and Decree dated 9.8.1990 respectively made in A.S.Nos.37 and 38 of 1990 by the Principal Subordinate Judge, Coimbatore, thereby reversing the Judgment and Decree dated 21.6.1988 respectively made in O.S.Nos.172 and 171 of 1983 by the Principal District Munsif, Coimbatore.

For Appellant .. Mr.V.Chockalingam
For Respondents. .. Mr.Ishtiaq Ahammed for R1 to R3
No appearance for R4 and R5.

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JUDEMENT

The appellant in S.A.No.1430 of 1991 and 1431 of 1991 was defendant in O.S.Nos.172 and 171 of 1983 respectively, which were filed by one M/s.Viswa Bandhu and M/s. Shah Fatehchand Jawantraj for recovery of Rs.10,000/- and Rs.8,000/- respectively. The trial Court dismissed both the suits, aggrieved by the judgments and decrees of the trial Court, the respondents 1 and 2 in both the second appeals have preferred appeal in A.S.Nos.37 and 38 of 1990, which were allowed, hence the present second appeals are filed.

2. The facts involved in these two cases is that two Demand Drafts were drawn on Syndicate Bank, Coimbatore by the first respondent in both the second appeals which were sent by Record of Delivery to the second respondent in both the appeals, on transit it is stated they were lost. The person who managed to encash the said Demand Drafts, was introduced by the appellant Bank customer, and he has opened an account in the appellant bank, deposited the said Demand Drafts and encashed them.

3. The case of the respondents 1 and 2 in both the appeals is that the appellant herein has not taken any bona fide steps to conduct enquiry about the person who has opened a new account, casually had allowed the said person, to encash the said Demand Drafts; that the appellant has not examined the person who encashed the said Demand Drafts or the person who introduced the said person, to prove that there is no negligence on their part. While so, considering the said fact, the first appellate Court has allowed the appeals, hence, prayed for dismissal of these second appeals.

4. Learned counsel appearing for the appellant submits that the appellant was not even intimated about the incident, if any intimation for stop payment has been sent they could have been alert, but in this case in the absence of such intimation, fastening the liability on the appellant is invalid; that the appellant has lodged necessary complaint with the police, before the conclusion of the investigation, the suits have been filed hastily, however, fixing the negligence on the appellant by the first appellate court is not valid and prayed for allowing both the second appeals.

5. Before the trial court the respondents/plaintiffs have marked Exs. A1 to A10 and examined one Ashok on their side as P.W.1, the appellants have marked Exs. B1 to B3 and examined one Sriram as D.W.1. The trial Court dismissed the suits on the ground that no stop payment intimation was sent to the appellant. The Postal Department was not arrayed as defendant. The first Appellate Court after careful consideration of the oral and documentary evidence by both sides and also considering the judgment passed by the trial court came to the conclusion that though D.W.1 has well acquaintance with the Banking Rules and Regulation he has not taken

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any diligent efforts to probe into the matter either at the time of opening of the account by the stranger who encash the Demand Draft or at the time of filing the complaint with the police, which is evident, that the Account Number found in the Savings Bank Account and police complaint are different. The appellant has not chosen to examine the customer who introduced the third party to open the account and fixed negligence on the part of the appellant thereby setting aside the judgment and decree passed by the trial Court.

6. Learned counsel appearing for the respondent relied upon Bank Cases 2004 Vol.II, page No.1, reported in Kerala State Co-operative Marketing Federation v. State Bank of India & Others, Para 13 of the said decision runs as follows:-

> " 13. The Ist respondent's Branch Manager gave evidence. From his evidence it is clear that the person who called himself K.Narayhanan opened an account on the introduction of an account holder by name Dharman Panicker. In the Account Opening Form the address is given only as "Kaniyarath P.O., Kalisseri". Thus an absolutely vague address was given. The Bank made no inquiries as to the creditworthiness of the said K.Narayhanan or as to his full address or even about his telephone number. Thereafter even though initially the account was opened with only Rs.20/- the exact amount of Rs.80/- was deposited for purpose of receipt of a cheque book. The Ist respondent Bank does not seem to have put on its guard, even when a cheque for a very large amount i.e. Rs.1,00,000/- was deposited soon thereafter. In cross-examination the Branch Manager admits that in the Account opening form neither the name nor the occupation of the person introducing had been filled up. He admits that no inquiry was made regarding the nature of business of K.Narayhanan or where the place of business was. Even after it was found out that that a cheque had been forged and stop payment notice had been issued, no inquiry was made by the Bank with the introducer. When asked why no inquiries were made, the answer given was that the Bank has no responsibility to look into it. Another factor which mitigates against the Ist respondent Bank is that it made no attempt to lead the evidence of the person who had introduced the account holder."

In the said judgment, the Hon'ble Supreme court held that the burden of proof lies on the Bank who allowed to encash the Negotiable Instruments, when no attempt to lead evidence of person who introduced the account holder to show it acted in good faith.

7. The learned counsel for the appellant relies on a decision reported in Indian Overseas Bank Vs. Industrial Chain concern (1990(1) SCC 484) to say that the appellant/Bank could not be held to have been negligent while opening the account or negligent in collecting the cheques hence fastening the liability on the appellant by the Ist Appellate Court is untenable. It is to be noted that the said judgment reported in 1990(1) SCC 484

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Indian Overseas Bank Vs. Industrial Chain concern has been considered by the Hon'ble Supreme Court in the earlier decision viz., Banking Cases 2004 Vol. II page 1 (Kerala State Co-operative Marketing Federation v. State Bank of India & Others). In view of the discussions made above, the appellant has not made any attempt to disprove the negligence, this court is of the view the judgment and decree passed by the first appellate Court is perfectly valid, hence, no interference is warranted.

8. The present second appeals are filed only on question of facts, since no question of law much less the substantial question of law involved in both the second appeals and the same are dismissed. the Judgment and Decree dated 9.8.1990 respectively made in A.S.Nos.37 and 38 of 1990 by the Principal Subordinate Judge, Coimbatore, thereby reversing the Judgment and Decree dated 21.6.1988 respectively made in O.S.No.172 and 171 of 1983 by the Principal District Munsif, Coimbatore are confirmed. No costs.

gr.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Subordinate Judge, Coimbatore,
2.The Principal District Munsif, Coimbatore.

2 cc To Mr.V.Chockalingam, Advocate SR 40353 & 40352.
2 cc To Mr.N.Ishtiaq Ahamed, Advocate SR 40113 & 40112.

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